

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: CHARLES SAMUEL FILLINGANE  
and FREIDA LYNNE FILLINGANE  
DEBTORS

CASE NO. 17-01095-EE

CHAPTER 7

---

BANKPLUS'S RESPONSE TO DEBTORS'  
MOTION TO DISMISS DEBTOR FREIDA LYNNE FILLINGANE

---

BankPlus files this *Response* to the *Motion to Dismiss Debtor Freida Lynne Fillingane* (Dkt. # 80, the "Motion") filed by Debtors Charles Samuel Fillingane and Freida Lynne Fillingane (together, the "Debtors"), as follows:

**FACTUAL BACKGROUND**

1. On March 21, 2017 (the "Petition Date"), the Debtors filed in this Court, *inter alia*, a voluntary Petition (Dkt. # 1, the "Petition") for protection under Chapter 7 of the United States Bankruptcy Code,<sup>1</sup> initiating the above-captioned bankruptcy case (the "Bankruptcy Case").

2. On October 2, 2017, BankPlus filed a *Motion to Convert Case to Chapter 11* (Dkt. # 41, the "Motion to Convert"), which requests that the Bankruptcy Case be converted to a case under Chapter 11 of the Bankruptcy Code, under 11 U.S.C. §§ 707(b) and/or 706(b) and Fed. R. Bankr. P. 1017.

3. On June 13, 2018, the Debtors filed their Motion, requesting that Debtor Freida Lynne Fillingane be "dismiss[ed] . . . from this action to convert the Chapter 7 to a Chapter 11," or "from this action to convert her case to a Chapter 11 action," on the grounds that she "was not a party to any of the loan agreements with BankPlus," "did not sign any of the loan documents with BankPlus," "did not sign the financial statement obtained by BankPlus," and

---

<sup>1</sup> See *Voluntary Petition* (Dkt. # 1).

“was not a party to or liable on any of the business debts listed in the Chapter 7 bankruptcy case.”

### **RESPONSE**

BankPlus respectfully requests that the Court deny the Debtors’ Motion, because it requests relief that is not contemplated by the Bankruptcy Code and that appears to be procedurally impossible.

Sections 706(b) and 707(b) of the Bankruptcy Code concern, in relevant part, the conversion of a “case” from Chapter 7 to a proceeding under some other chapter of the Bankruptcy Code. These sections do not appear to contemplate the notion of conversion of “parties” or “debtors” to a case under another chapter of the Bankruptcy Code.

The Debtors filed a joint Petition and they therefore are joint Debtors in this Bankruptcy Case. BankPlus’s Motion to Convert seeks the conversion of this Chapter 7 Bankruptcy Case to a case under Chapter 11 of the Bankruptcy Code. If the Motion to Convert is granted, then this Bankruptcy Case would be converted to a Chapter 11 case. Thus, unless the Debtors were to sever this Bankruptcy Case into two individual cases, it does not appear to be procedurally *possible* to pursue conversion of a *joint* bankruptcy case as against *only one debtor*, or for one of the joint Debtors to be “dismissed” from the pending Motion to Convert, as the Debtors’ Motion requests.

**WHEREFORE**, for the reasons set forth above, and for such other reasons as may be shown at any hearing on the Motion, BankPlus respectfully requests that the Motion be denied. BankPlus further pray for general relief.

**THIS** the 23rd day of July, 2018.

Respectfully submitted,

**BANKPLUS**

By: /s/ Christopher H. Meredith

William H. Leech, MSB No. 1175

Sarah Beth Wilson, MSB No. 103650

Christopher H. Meredith, MSB No. 103656

Shauncey G. Hunter, MSB No. 109185

Michael D. Anderson, MSB No. 105523

*Its Attorneys*

OF COUNSEL:

COPELAND, COOK, TAYLOR & BUSH, P.A.

600 Concourse, Suite 100

1076 Highland Colony Parkway (Zip—39157)

P.O. Box 6020

Ridgeland, MS 39158

Telephone: (601) 856-7200

Facsimile: (601) 856-7626

bleech@cctb.com

sbwilson@cctb.com

cmeredith@cctb.com

shunter@cctb.com

manderson@cctb.com

**CERTIFICATE OF SERVICE**

Service provided via Notice of Electronic Filing (NEF) through ECF:

*Natalie Kareda Brown;*

*Frank H. Coxwell, III;*

*Eileen N. Shaffer; and*

*Office of the US Trustee.*

**THIS** the 23rd day of July, 2018.

/s/ Christopher H. Meredith

Of Counsel